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HOUSE BILL 246

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Thomas A. Anderson

AN ACT

RELATING TO IDENTITY THEFT; EXTENDING THE TIME LIMIT FOR PROSECUTION; PROVIDING REMEDIES TO VICTIMS; INCREASING A PENALTY; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 30-1-8 NMSA 1978 (being Laws 1963, Chapter 303, Section 1-8, as amended) is amended to read:

"30-1-8. TIME LIMITATIONS FOR COMMENCING PROSECUTION. --

~~[No]~~ A person shall not be prosecuted, tried or punished in any court of this state unless the indictment is found or information or complaint is filed ~~[therefor]~~ within the time as provided:

A. for a second degree felony, within six years from the time the crime was committed;

B. for a third or fourth degree felony, within five

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1 years from the time the crime was committed;

2 C. for a misdemeanor, within two years from the  
3 time the crime was committed;

4 D. for a petty misdemeanor, within one year from  
5 the time the crime was committed;

6 E. for any crime against or violation of the  
7 revenue laws of this state or of Section 51-1-38 NMSA 1978,  
8 within three years from the time the crime was committed;

9 F. for an identity theft crime, within three years  
10 from the time the crime was discovered;

11 [~~F.~~] G. for any crime not contained in the Criminal  
12 Code, or where a limitation is not otherwise provided for,  
13 within three years from the time the crime was committed; and

14 [~~G.~~] H. for a capital felony or a first degree  
15 violent felony, no limitation period shall exist and  
16 prosecution for these crimes may commence at any time after the  
17 occurrence of the crime."

18 Section 2. Section 30-16-24.1 NMSA 1978 (being Laws 2001,  
19 Chapter 138, Section 1) is amended to read:

20 "30-16-24.1. THEFT OF IDENTITY. --

21 A. Theft of identity consists of:

22 (1) willfully obtaining, recording or  
23 transferring personal identifying information of another person  
24 without the authorization or consent of that person and with  
25 the intent to defraud that person or another or with the intent

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1 to sell or distribute the information to another; or

2 (2) using personal identifying information of  
3 another person or of a false or fictitious person, whether that  
4 person is dead or alive, to avoid summons, arrest or  
5 prosecution or to impede a criminal investigation.

6 B. As used in this section:

7 (1) "personal identifying information" means  
8 information that alone or in conjunction with other information  
9 identifies a person, including the person's name, address,  
10 telephone number, driver's license number, social security  
11 number, ~~date of birth, biometric data,~~ place of employment,  
12 [~~maiden name of the person's mother~~], mother's maiden name,  
13 demand deposit account number, checking or savings account  
14 number, credit card or debit card number, personal  
15 identification number, electronic identification codes,  
16 automated or electronic signatures, passwords or any other  
17 numbers or information that can be used to access a person's  
18 financial resources, obtain identification, act as  
19 identification or obtain goods or services; and

20 (2) "biometric data" means data, such as  
21 finger, voice, retina and iris prints, that capture, represent  
22 or enable the reproduction of unique physical attributes of a  
23 person.

24 C. Whoever commits theft of identity is guilty of a  
25 [~~misdeemeanor~~] fourth degree felony.

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1           D. Prosecution pursuant to this section shall not  
2 prevent prosecution pursuant to any other provision of the law  
3 when the conduct also constitutes a violation of that other  
4 provision.

5           E. In a prosecution brought pursuant to this  
6 section, the theft of identity shall be considered to have been  
7 committed in the county where the person whose identifying  
8 information was appropriated resided at the time of the  
9 offense, or in which any part of the offense took place,  
10 regardless of whether the defendant was ever actually present  
11 in the county.

12           F. A person found guilty of theft of identity  
13 shall, in addition to any other punishment, be ordered to make  
14 restitution for any financial loss sustained by a person  
15 injured as the direct result of the theft of identity. In  
16 addition to out-of-pocket costs, restitution may include  
17 payment for costs, including attorney fees, incurred by that  
18 person in clearing his credit history or credit rating or costs  
19 incurred in connection with a civil or administrative  
20 proceeding to satisfy a debt, lien, judgment or other  
21 obligation of that person arising as a result of the theft of  
22 identity.

23           G. The sentencing court shall issue written  
24 findings of fact and may issue orders as are necessary to  
25 correct [~~a public record~~] public records and errors in credit

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1 reports or identifying information that contain false  
2 information as a result of the theft of identity."

3 Section 3. [NEW MATERIAL] IDENTITY THEFT--EXPUNGEMENT  
4 FROM POLICE AND COURT RECORDS. --

5 A. A person whose name or other identifying  
6 information was used, without consent or authorization, by  
7 another person who was charged or arrested using such name or  
8 identification may file a petition in district court requesting  
9 a determination of factual innocence. If the court finds that  
10 there is no reasonable cause to believe that the person  
11 committed the offense with which the person's identity has been  
12 associated, the court shall issue an order certifying the  
13 person's factual innocence.

14 B. When a court finds a person factually innocent  
15 pursuant to Subsection A of this section, the court shall order  
16 that the person's name and other identifying information  
17 contained in the court records be removed and the records  
18 labeled to show that the information is not accurate and does  
19 not reflect the perpetrator's identity due to identity theft.  
20 The court shall also order expungement of the arrest  
21 information pursuant to Section 29-3-8.1 NMSA 1978.

22 C. A court may at any time vacate the determination  
23 of factual innocence if the petition, or information submitted  
24 in support of the petition, contains a material  
25 misrepresentation or fraud. If the court vacates the

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1 determination, an order shall be entered rescinding any orders  
2 made pursuant to Subsection B of this section.

3 Section 4. [NEW MATERIAL] IDENTITY THEFT PASSPORT. --

4 A. The attorney general, in cooperation with the  
5 department of public safety, shall issue an identity theft  
6 passport to a person who claims to be a victim of identity  
7 theft pursuant to Section 30-16-24.1 NMSA 1978, and who  
8 provides to the attorney general:

9 (1) a certified copy of a court order obtained  
10 pursuant to Section 3 of this act, if applicable;

11 (2) a full set of fingerprints;

12 (3) a driver's license or other government-  
13 issued identification or record; and

14 (4) other information as required by the  
15 attorney general.

16 B. An identity theft passport shall state the basis  
17 for its issuance and shall be accepted as evidence of identity  
18 by law enforcement officers and others who may challenge the  
19 person's identity.

20 C. When an identity theft passport is issued, the  
21 attorney general shall transmit a record of the issuance to the  
22 motor vehicle division of the taxation and revenue department.  
23 The motor vehicle division shall note on the person's driver  
24 record that an identity theft passport has been issued. The  
25 attorney general may provide access to identity theft

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1 information to criminal justice agencies and to those who have  
2 been issued an identity theft passport.

3 D. The attorney general shall prepare and  
4 distribute to local law enforcement agencies and to the general  
5 public an information packet that includes information on how  
6 to prevent and stop identity theft.

7 Section 5. [NEW MATERIAL] IDENTITY THEFT-- CREDIT  
8 REPORTS. --

9 A. If a person submits a copy of a police report  
10 indicating identity theft or an identity theft passport to a  
11 consumer reporting agency, the agency shall within thirty days  
12 block the reporting of any information that the person alleges  
13 appears on his credit report as a result of a violation of  
14 Section 30-16-24.1 NMSA 1978.

15 B. A consumer reporting agency may decline to block  
16 or may rescind a block of a person's information if, in the  
17 exercise of good faith and judgment, the consumer reporting  
18 agency believes that:

19 (1) the information was blocked due to a  
20 misrepresentation of a material fact by the person;

21 (2) the information was blocked due to fraud,  
22 in which the person participated or of which the person had  
23 knowledge, and which may for purposes of this section be  
24 demonstrated by circumstantial evidence;

25 (3) the person agrees that portions of the

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1 blocked information or all of it were blocked in error;

2 (4) the person knowingly obtained or should  
3 have known that he obtained possession of goods, services or  
4 money as a result of the blocked transaction or transactions;  
5 or

6 (5) the consumer reporting agency, in the  
7 exercise of good faith and reasonable judgment, has substantial  
8 reason based on specific, verifiable facts to doubt the  
9 authenticity of the alleged violation of Section 30-16-24.1  
10 NMSA 1978.

11 C. If blocked information is unblocked pursuant to  
12 this section, the person shall be notified in the same manner  
13 as consumers are notified of the reinsertion of information  
14 pursuant to the federal Fair Credit Reporting Act, 15 U.S.C.  
15 1681i, as amended, or within five business days, whichever is  
16 later.

17 D. A consumer reporting agency shall delete from a  
18 person's credit report inquiries for credit reports based upon  
19 credit requests that the consumer reporting agency verifies  
20 were initiated as a result of a violation of Section 30-16-24.1  
21 NMSA 1978.

22 E. As used in this section:

23 (1) "consumer reporting agency" means a person  
24 that, for monetary fees, dues or on a cooperative nonprofit  
25 basis, regularly engages in the practice of assembling or

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1 evaluating consumer credit information or other information on  
2 consumers for the purpose of furnishing consumer reports to  
3 third parties; and

4 (2) "consumer report" or "credit report" means  
5 a written, oral or other communication of information by a  
6 consumer reporting agency bearing on a consumer's credit  
7 worthiness, credit standing, credit capacity, character,  
8 general reputation, personal characteristics or mode of living  
9 that is used or expected to be used or collected for the  
10 purpose of serving as a factor in establishing the consumer's  
11 eligibility for credit, insurance, investment, benefit,  
12 employment or other purpose as defined by the Fair Credit  
13 Reporting Act, 15 U. S. C. 1681a.